Supreme Court, U. S.
FILED
SEP 20 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-580

RICHARD GARCIA, ET AL,
Appellants

v.

UVALDE COUNTY, ET AL,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO DISMISS OR AFFIRM

GRANT COOK
JEFFREY A. DAVIS
REYNOLDS, ALLEN & COOK
16th Floor, 1100 Milam Bldg.
Houston, Texas 77002

EMMETT HARRIS
First State Bank Building
Uvalde, Texas 78801

Attorneys for Appellees

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	2
STATEMENT	2
ARGUMENT	4
CONCLUSION	9
CERTIFICATE OF SERVICE	11

INDEX OF AUTHORITIES

CASES:

Allen v. State Board of Elections, 393 U.S. 544 (1969)	8
Georgia v. United States, 411 U.S. 526 (1973)	7, 8, 9
Harper v. Levi, 171 U.S. App. D.C. 321, 520 F.2d 53 (1975)	9
Morris v. Gressette, 432 U.S. 491 (1977)	8, 9

STATUTE:

42 U.S.C. § 1973c	*Passim*

REGULATIONS:

28 C.F.R. § 51.3(a)	5
28 C.F.R. § 51.3(b)	5
28 C.F.R. § 51.10(a)	5, 6
28 C.F.R. § 51.10(a)(1)-(5)	5
28 C.F.R. § 51.10(a)(6)	6
28 C.F.R. § 51.10(b)(8)	6
28 C.F.R. § 51.18(a)	6, 7
28 C.F.R. § 51.18(b)(1)	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. _____

RICHARD GARCIA, RAMON VELASQUEZ and OLGA RODRIGUEZ, Individually and on Behalf of All Others Similarly Situated,
Appellants

v.

UVALDE COUNTY, A Political Subdivision organized under the laws of the State of Texas, LEO DARLEY, Individually and in His Official Capacity as Uvalde County Judge, Y. O. COLEMAN, GILBERT TORRES, GEORGE MOORE and CLAYTON DISMUKES, Individually and in Their Official Capacities as County Commissioners of Uvalde County, Texas; EILEEN CARLISLE, Individually and in Her Official Capacity as Uvalde County Texas County Clerk; KENNETH KELLEY, Individually and in His Official Capacity as Sheriff of Uvalde County, Texas; and WILLIAM A. KESSLER, Individually and in His Official Capacity as Democratic Party Chairman,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MOTION TO DISMISS OR AFFIRM

Pursuant to Paragraphs 1(b) and (c) of Rule 16 of the Rules of this Court, appellees Uvalde County and

Leo Darley, Y. O. Coleman, George Moore, Clayton Dismukes, Eileen Carlisle, Kenneth Kelley and William A. Kessler move that the appeal be dismissed or, alternatively, that the judgment of the District Court be summarily affirmed.

QUESTIONS PRESENTED

The jurisdictional statement of appellants (p. 2) lists two numbered questions as presented on this appeal. The appellees suggest that the last phrase[1] in the question listed as number 1 is factually erroneous. For purposes of simplification however, the error will be discussed in the first part of the argument, below, and the questions presented here are those suggested by appellants:

> "1. Whether the Attorney General has the authority under the Voting Rights Act and related regulations to extend the statutory 60 day period for evaluating a reapportionment plan submission more than once, where the submitting authority creates the need for further extensions by failing to submit census information which it admittedly has in its possession?
>
> "2. Whether the Court below exceeded its authority by reviewing the circumstances in which the objection letter was issued in order to determine whether or not it was valid and timely?"

STATEMENT

The relevant facts are set out in pages 2-6 of the Memorandum Opinion and Order of the District Court

1. ". . . , where the submitting authority creates the need for further extensions by failing to submit census information which it admittedly has in its possession."

which is attached as Appendix C to the jurisdictional statement of appellants. Therefore, rather than burden the Court with repetition, appellees will summarize the facts, in outline form, as follows:

1.	Initial submission	March 22, 1976
2.	Attorney general requests additional information items A, B and C (First Request)	May 19, 1976
3.	Uvalde County responds with A and B and states "we don't have any way" of providing C	May 28, 1976
4.	Attorney General requests additional information items D, E, F and G and again, C (Second Request)	July 30, 1976
5.	Uvalde County responds with available information requested but, reiterates the unavailability of item C	August 12, 1976
6.	Attorney General interposes objection	October 13, 1976

Slightly more than two weeks prior to the November 1, 1976 general election and approximately 205 days after the submission process began, the Attorney General's office objected to an apportionment scheme adopted and in effect since 1973. Under the 1973 apportionment, a Mexican-American was elected County Commissioner in Uvalde County; prior to that time, at least in recent years, no Mexican-American had ever been elected to that position.

Contrary to the suggestion of appellants that Uvalde County in bad faith created a need for further extensions, the District Court made the following finding:

> "Thus, as of June 1, 1976, the date on which the County Judge's May 28, 1976 letter with enclosures responding to the Attorney General's first request for additional information letter was received, Uvalde County had (1) made the initial submission of the 1973 reapportionment and (2) supplied the Attorney General with all of the information he had requested that was available to the County." (Memorandum Opinion and Order, Appendix C, p. 5, Jurisdictional Statement).

Since no objection was interposed within 60 days following June 1, 1976, Uvalde County had complied with the requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

The District Court held that the Attorney General's office could not continue postponing the start of the 60 day period of assessment of Uvalde County's submission by requesting additional information a second time. As of June 1, 1976, the County's submission was complete, according to the regulations promulgated by the Attorney General, 28 C.F.R. Part 51 (Memorandum Opinion and Order, Appendix C, p. 9, jurisdictional statement).

ARGUMENT

1. AS TO APPELLANTS' CONTENTION THAT THE ATTORNEY GENERAL HAD THE AUTHORITY TO SUSPEND THE SIXTY (60) DAY PERIOD A SECOND TIME BY AGAIN REQUESTING ADDITIONAL INFORMATION.

As worded by appellants, the question presented as number 1 (jurisdictional statement, p. 2) is factually erroneous. In that question, appellants suggested that the "submitting authority [created] the need for further

extensions by failing to submit census information which it admittedly [had] in its possession." That is incorrect and is contrary to the finding of the District Court quoted above.

In its first additional information request letter the Attorney General's office requested the County to provide the total population by "race" for each commissioner precinct both before and after adoption of the 1973 reapportionment plan. The County Judge responded as follows:

> "We do not have any way of telling the total population of these districts before and after this change was made." (See, Memorandum Opinion and Order, Appendix C, pp. 4-5, jurisdictional statement).

Therefore, these appellees suggest that the question presented should be, whether the Attorney General had the authority, under the regulations and the statute, to extend the start of the 60 day period a second time by requesting information that the submitting authority had already stated was unavailable. As will be shown below, because the District Court merely applied unambiguous regulations to the facts presented, no substantial federal question justifying further argument is presented.

The Attorney General has 60 days in which to interpose an objection to a submitted change affecting voting. 42 U.S.C. § 1973c; 28 C.F.R. § 51.3(a). The 60 day period commences upon the receipt of information meeting the requirements of § 51.10(a) of the regulations. 28 C.F.R. § 51.3(b).

Section 51.10(a) states that each submission shall contain certain information described in § 51.10(a)(1)-

(5)[2] plus "other information which the Attorney General determines is required to enable him" to make his determination. § 51.10(a)(6). Subpart (6) also states that when such other information is required, the Attorney General shall notify the submitting authority in the manner provided in Section 51.18(a).

Section 51.18(a) of the regulations requires the Attorney General to request "such further information as is necessary" and provides that the 60 day period will commence upon the receipt of "such information". Importantly, that subsection of the regulations also states that *"[t]he request"* shall be made promptly after the Attorney General receives the original submission (emphasis added). Thus, the regulations clearly contemplate a single request postponing the 60 day period. Here, the first request was made on May 19, 1976.

Section 51.18(a) of the regulations, providing for the start of the 60 day period upon the receipt of the Section 51.10(a) information, must be read in connection with Section 51.10(b)(8). There, it is provided that when information requested is unavailable, the submission should so state. These regulations, read together, clearly indicate that the Attorney General has no authority to indefinitely suspend the 60 day period when requested information is stated to be unavailable. If such authority were given, Congress' 60 day requirement in Section 5 of the Voting Rights Act would be meaningless.

The District Court applied these regulations to the circumstances present here. In the manner required by the regulations, Uvalde County complied with the first request for additional information on May 28, 1976 by

2. Appellants do not argue that these requirements were not met.

providing the Attorney General with the information he had requested except that which the County stated was unavailable. Therefore, pursuant to the regulations, the submission was complete more than 60 days prior to the October 13, 1976 objection of the Attorney General.

Appellees do not deny the Attorney General the right to request additional information a second time. In fact, the regulations expressly provide for the situation in which a second request is desirable to avoid acrimony between the Attorney General and the submitting authority. See *Georgia v. United States,* 411 U.S. 526, 540-541, 93 S.Ct. 1702, 1710-1711 (1973). However, the second request for additional information must be made *"during* the sixty day period", not postponing it. 28 C.F.R. § 51.18(b)(1) (emphasis added). Thus, the District Court properly held that the Attorney General's second request on July 30, 1976, did not postpone the start of the 60 day period.

The decision of the District Court is not in conflict with the Court's decision in *Georgia v. United States, supra.* There, Section 51.18(a) of the regulations allowing the Attorney General to postpone the start of the 60 day period by requesting additional information was held to be reasonable and valid. The request for additional information procedure was not used in that case to postpone the start of the 60 day period a second time after the submitting authority had complied with a prior request for additional information. Other factors distinguishing the *Georgia* case from this one are dealt with in the Memorandum Opinion and Order of the District Court at pages 8-9 (Appendix C, jurisdictional statement).

For these reasons, the question presented as number 1 does not raise a substantial federal question justifying further argument.

2. AS TO APPELLANTS' CONTENTION THAT THE DISTRICT COURT EXCEEDED ITS AUTHORITY BY REVIEWING THE CIRCUMSTANCES IN WHICH THE OBJECTION LETTER WAS ISSUED IN ORDER TO DETERMINE WHETHER OR NOT IT WAS VALID AND TIMELY.

This contention does not present a substantial federal question justifying further argument because the cases cited by appellants, *Morris v. Gressette,* 432 U.S. 491, 97 S.Ct. 2411 (1977) and *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702 (1973) clearly support the authority of the District Court to determine whether an objection is valid and timely when the issue is raised defensively by a submitting authority in a suit to enforce that objection.

Georgia v. United States, supra, was a suit, like this one, brought under the authority of *Allen v. State Board of Elections,* 393 U.S. 544, 89 S.Ct. 817 (1969), to enjoin the implementation of a change affecting voting to which an objection had been interposed. This Court allowed the review of the circumstances in which the objection was interposed and, applying the regulations to the facts presented, determined the objection to be timely. As Mr. Justice Marshall notes in his dissenting opinion in *Morris v. Gressette, supra,* "the Court [in *Georgia*] unanimously rejected the government's argument that the propriety of the objection was 'outside the permissible scope of judicial inquiry.' " *Morris v. Gressette, supra,* 97 S.Ct. at 2426.

In *Morris v. Gressette, supra,* another suit like this one to enjoin the implementation of an electoral change to which an objection had been entered, the plaintiffs came to court "armed" with an objection letter. *Id.,* 97 S.Ct. at 2417. However, as the Court stated in that case and as the District Court determined in the instant case, that alone does not necessarily entitle plaintiffs to the relief they seek. The circumstances in which the objection was interposed may be reviewed to determine the timeliness and propriety of the objection when the issue is raised defensively by the submitting authority.

This case does not involve a situation like that in *Harper v. Levi,* 171 U.S. App. D.C. 321, 520 F.2d 53 (1975) discussed in *Morris v. Gressette.* That is, here, no third parties delayed the "expeditious" Voting Rights Act procedure by an independent suit seeking judicial review of the Attorney General's failure to interpose an objection. Instead, as in *Georgia v. United States, supra,* and *Morris v. Gressette,* the timeliness of the Attorney General's objection was raised defensively by the submitting authority.

For these reasons, appellees submit that no substantial federal question justifying further argument is presented.

CONCLUSION

For these reasons, appellees submit that this appeal does not bring substantial federal questions before the Court. Therefore, appellees move the Court to sum-

marily dismiss the appeal or affirm the judgment of the District Court.

Respectfully submitted,

GRANT COOK
REYNOLDS, ALLEN & COOK
16th Floor, 1100 Milam Bldg.
Houston, Texas 77002
AC 713/651-1300
Attorneys for Appellees

Of Counsel:

JEFFREY A. DAVIS
REYNOLDS, ALLEN & COOK
16th Floor, 1100 Milam Building
Houston, Texas 77002

EMMETT HARRIS
First State Bank Building
Uvalde, Texas 78801

Defendants-Intervenors, Norment Foley and Gene Ilse, adopt the foregoing Motion in full.

By: LLOYD LOCHRIDGE
MCGINNIS, LOCHRIDGE
& KILGORE
5th Floor, Texas State
Bank Building
900 Congress Avenue
Austin, Texas 78701
Attorneys for
Defendants-Intervenors

CERTIFICATE OF SERVICE

I, Grant Cook, a member of the Bar of the Supreme Court of the United States, hereby certify that on September 18, 1978, pursuant to Rule 33 of the Supreme Court Rules, I served three copies of the foregoing Motion to Dismiss or Affirm on each of the interested parties by placing such copies in the United States mail, first class postage prepaid, addressed to the following persons:

Paul D. Rich, Winter Garden Project, Texas Rural Legal Aid, Inc. P. O. Drawer 707, Crystal City, Texas 78839, Attorney for Appellants; Lloyd Lochridge, McGinnis, Lochridge & Kilgore, 5th Floor, Texas State Bank Building, Austin, Texas 78701, Attorney for Defendant-Intervenors; Rogelio Munoz, 231 S. Getty Street, P. O. Box 1434, Uvalde, Texas 78801, Attorney for Gilbert Torres; and the Solicitor General, Department of Justice, Washington, D.C. 20530, for the United States.